IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

OP.No. 18518 of 2001(S)

PETITIONER:

SITHARA R., MANAPATTIL HOUSE, NOCHAD P.O., VIA P.O. NADUVANNOOR (KOZHIKODE DISTRICT)

BY ADV. SMT.VANAJA MADHAVAN

RESPONDENTS:
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1. THE SUPERINTENDENT OF POST OFFICES, VATAKARA DIVISION, P.O. VATAKARA.

2. THE CHIEF POSTMASTER GENERAL, KERALA CIRCLE, TVM.

3. UNION OF INDIA, REPRESENTED BY SECRETARYT, MINISTRY OF COMMUNICATIONS, GOVT. OF INDIA, NEW DELHI,.

4. V.K. BHASKARAN, S/O. LATE SHANKARAN, EXTRA DEPARTMENTAL BRANCH POST MASTER (ACTING) KILINYANYAM, VELLIARAKANDY HOUSE, P.O. NOCHAD, VIA NADAVANNOOR (KOZHIKODE DISTRICT)

5. THE CAT, ERNAKULAM BENCH, CAT COMPLEX, INDIRA GANDHI ROAD, COCHI-18, REPRESENTED BY ITS REGISTRAR.

SRI.JOHN VARGHESE, ASSISTANT SG

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 30/03/2007, ALONG WITH OP NO. 27157 OF 2001 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN OP 18518/2001

EXT.P1(A)-TRUE COPY OF PAGES 84 AND 85

EXT.P1(B)- DO. OF 86 & 87

EXT.P1(C)- DO. OF 88 AND 89

EXT.P1(D)- DO. OF 94 AND 95

EXT.P2-TRUE COPY OF PAPER BOOK IN OA 195/2001 FILED BEOFRE THE TRIBUNAL DT.17.2.2001

EXT.P3-TRUE COPY OF THE REPLY STATEMENT IN OA 195/2001

EXT.P4-TRUE COPY OF ORDER OF THE TRIBUNAL DT.20.2.2001

EXT.P5-TRUE COPY OF THE FINAL ORDER IN OA 195/2001 DT.10.4.2001

RESPONDENTS' EXTS:

EXT.R1(A)-TRUE COPY OF THE LETTER DT.28.9.90

EXT.R1(B)-TRUE COPY OF THE JUDGMENT IN OP 11512/00 DT.6.9.00

EXT.R1(C)-TRUE COPY OF THE JUDGMENT IN OA 45/98 DATED 25.2.99

// TRUE COPY //

P.S. TO JUDGE

J.B. Koshy & T.R. Ramachandran Nair, JJ.

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such person alone, recruitment from open market can be resorted to. In view of the above decision of the Tribunal, the respondents decided to fill up the post by appointment by transfer and to make recruitment from open market only if need arises. The Tribunal found that there is no infirmity in the above stand taken by the respondents. It was also observed that the case of the applicant for appointment will be considered if the respondents resort to open market recruitment in the event of there being no eligible or suitable candidate from among the working E.D. Agents who have applied for transfer.

3. Counsel for the petitioner argued that the view taken by the Tribunal is not correct. It was argued that once the respondents have chosen to notify it for open recruitment, there is no justification to change the course midway and resort to appointment by transfer. We find that the said arguments are not acceptable in view of the fact that the eligibility of working E.D. Agents for appointment by transfer had been declared by the Tribunal in O.A. No.45/1998 and the respondents are only implementing the above order of the Tribunal. Therefore, there is no illegality or irregularity in the action taken by the respondents to consider the working E.D. Agents who have applied for transfer and consider them first. It is also to be noted that if there are no eligible candidates from among them, recruitment from

open market will be made. Therefore, none of the legal rights of the petitioner are affected by the impugned order of the Tribunal. We find no reason to interfere with the above order of the Tribunal.

4. The petitioner in O.P.No.27157/2001 was the applicant in O.A. No.198/2001. His claim for transfer to the particular post of Extra Departmental Branch Post Master, Nochat was that based on his provisional appointment in the same Post Office, he is entitled for preference. The Tribunal found that the claim of the petitioner that he has a precedence over other working E.D. Agents cannot stand since he was appointed in that post only by virtue of put off duty of one K.T. Bhaskaran Nair. It was further held that since the applicant is presently holding the post of E.D. Branch Post Master in another place based on his appointment on a regular basis, he is entitled to be considered for transfer along with other E.D. Agents. Accordingly, the Tribunal has issued a direction to consider the case of the applicant for transfer along with the request of other working E.D. Agents and resort to recruitment from open market only if the applicant or other E.D. Agents, if any, who have applied are found ineligible or unsuitable for appointment to the post. We find no reason to interfere with the above direction of the Tribunal. The petitioner's entitlement also has to be considered along with other E.D. Agents.

4. We find that the view taken in the orders under challenge are not perverse warranting interference under Article 227 of the Constitution of India.

Therefore, the Original Petitions fail. They are accordingly dismissed.

(J.B. Koshy, Judge.)

(T.R. Ramachandran Nair, Judge.)

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J.B. Koshy &

T.R. Ramachandran Nair, JJ.

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